



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CITY OF SAN DIEGO,

Plaintiff,

vs.

NATIONAL STEEL AND  
SHIPBUILDING  
COMPANY, et al.,

Defendants.

Case No.: 09-CV-02275-WQH (JLB)

**ORDER CONFIRMING GOOD  
FAITH SETTLEMENT BETWEEN  
SAN DIEGO GAS & ELECTRIC  
COMPANY AND BAE SYSTEMS  
SAN DIEGO SHIP REPAIR, INC.  
AND BARRING AND DISMISSING  
CLAIMS**

AND RELATED CROSS-ACTIONS  
AND COUNTERCLAIMS

1 The Joint Motion For Order Confirming Settlement Between San Diego Gas &  
2 Electric Company ("SDG&E") and BAE Systems San Diego Ship Repair, Inc. ("BAE  
3 Systems") (ECF No. 354) came on regularly for hearing before this Court on April 25,  
4 2014, the Honorable William Q. Hayes, judge presiding.

5 After considering the moving and opposition papers, the declarations of  
6 counsel, and the oral argument of counsel, the Settlement Agreement by and between  
7 SDG&E and BAE Systems ("Settlement Agreement") (Tracy Declaration, Exh. A,  
8 ECF No. 354) submitted to the Court for approval, and the record as a whole, the  
9 Court hereby finds that the Settlement Agreement entered into by and between  
10 SDG&E and BAE Systems was entered into in good faith and is fair, reasonable and  
11 consistent with the purposes of the Comprehensive Environmental Response,  
12 Compensation and Liability Act ("CERCLA"), 42 U.S.C. section 9601, *et seq.*, the  
13 Uniform Comparative Fault Act (12 U.L.A. 147), California Code of Civil Procedure  
14 sections 877 and 877.6, and state law theories for the apportionment of liability among  
15 alleged joint tortfeasors.

16 The matter having been briefed, argued and submitted for decision, and good  
17 cause appearing,

18 IT IS HEREBY ORDERED that the Motion is GRANTED, and IT IS  
19 FURTHER ORDERED that:

- 20 1. The Settlement Agreement is hereby approved as a good faith settlement  
21 and afforded all the rights and protections that accompany this determination.
- 22 2. The Court further finds and determines that the Settlement Agreement  
23 has been entered into in good faith within the meaning of Section 6 of the Uniform  
24 Comparative Fault Act, 12 U.L.A. 147 (1996), which is adopted as federal common  
25 law, the California Code of Civil Procedure §§ 877 and 877.6 and the rule of the *Tech-*  
26 *Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488 (1985).

1           3. Pursuant to Section 6 of the UCFA, Section 877.6 of the California Code  
2 of Civil Procedure, and CERCLA section 113, and subject only to Paragraphs 4 and 5  
3 below, any and all claims against SDG&E by BAE Systems and any other party to  
4 this action with respect to "Covered Matters" under the Settlement Agreement (which  
5 expressly does not include any "Excluded Matters") are hereby dismissed, with  
6 prejudice, and are hereafter and forever barred. "Covered Matters" under the  
7 Settlement Agreement, and references to the "Shipyard Sediment Area," and "Site" in  
8 the Settlement Agreement only refer and relate to areas within the "Shipyard  
9 Sediment Site" as defined in the "CAO." References to the "North Shipyard" in the  
10 Settlement Agreement only refer and relate to the North or BAE Shipyard that is  
11 within the Shipyard Sediment Site. Claims that relate to any non-marine sediment  
12 (i.e., landside) areas are outside the Shipyard Sediment Site and are not barred by this  
13 Order.

14           4. With respect to the claims of express contractual indemnity and breach of  
15 contract alleged by the San Diego Unified Port District against SDG&E as the  
16 Twentieth and Twenty-First Claims for Relief in the Port District's Third Amended  
17 and Supplemental Cross Claims (ECF No. 308), the Court finds that the Port District  
18 has asserted claims for independent damages that may not be recoverable under a  
19 CERCLA contribution claim. The Court further finds that the Port District's claims for  
20 contractual indemnity and breach of contract are the type of claims that were intended  
21 to be excluded from the UCFA. The injury alleged in the Port District's Twentieth and  
22 Twenty-First Claims for Relief goes beyond SDG&E's liability to the Port District for  
23 contamination costs, and these claims cannot be and are not barred by this Order.

24           5. The City of San Diego's First Cause of Action for cost recovery pursuant  
25 to Section 107(a)(4) of CERCLA and Seventh Cause of Action for cost recovery  
26 pursuant to Section 13304 of the California Water Code are not barred by this Order.  
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1           6.     BAE Systems' counterclaims against SDG&E with respect to "Excluded  
2 Matters" under the Settlement Agreement are hereby dismissed, without prejudice.

3           7.     SDG&E's claims against BAE Systems and any other party to this action  
4 with respect to "Covered Matters" under the Settlement Agreement (which expressly  
5 does not include any "Excluded Matters") are hereby dismissed, with prejudice.  
6 SDG&E's "Tidelands Claims" under the Settlement Agreement are hereby dismissed,  
7 without prejudice.

8           8.     The foregoing is subject to: (1) this Court retaining jurisdiction to  
9 construe and enforce the terms of the Settlement Agreement; (2) the respective rights  
10 of SDG&E and BAE Systems under the Settlement Agreement to later assert any  
11 claims related to "Excluded Matters," which shall not be deemed barred by entry of  
12 judgment or dismissal pursuant to the Settlement Agreement; (3) other rights  
13 expressly reserved under the Settlement Agreement; and (4) this Order becoming  
14 final.

15           9.     BAE Systems and SDG&E shall each bear their own costs and expenses,  
16 including attorneys' fees in this case, through the date of this Order.

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18           IT IS SO ORDERED.

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20           DATED: 11/25/14

  
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Hon. William Q. Hayes  
Judge, United States District Court